

HOUSE BILL 2811
By Coffey

AN ACT to amend Tennessee Code Annotated, Title 50 and Title 56, to enact the "Model Workers' Compensation Competitive Rating Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, is amended by adding Sections 2 through 21 as a new part to be appropriately designated.

SECTION 2. As used in this act, unless context requires otherwise:

(1) "Advisory organization" means any entity which either has two (2) or more member insurers or is controlled either directly or indirectly by two (2) or more insurers and which assists insurers in rate-making related activities. Two (2) or more insurers having a common ownership or operating in this state under common management or control constitute a single insurer for the purpose of this definition. Advisory organization does not include a joint underwriting association, any actuarial or legal consultant, any employee of an insurer or insurers under common control or management or their employees or manager.

(2) "Classification system" or "classification" means the plan, system or arrangement for recognizing differences in exposure to hazards among industries, occupations or operations of insurance policyholders.

(3) "Commissioner" means commissioner of commerce and insurance.

(4) "Competitive market" means a market which has not been found to be noncompetitive pursuant to Section 4.

(5) "Expenses" means that portion of any rate attributable to acquisition and field supervision; collection expenses and general expenses; and taxes, licenses and fees.

(6) "Experience rating" means a rating procedure utilizing past insurance experience of the individual policyholder to forecast future losses by measuring the policyholder's loss experience against the loss experience of policyholders in the same classification to produce a prospective premium credit, debit or unity modification.

(7) "Loss trending" means any procedure for projecting developed losses to the average date of loss for the period during which the policies are to be effective.

(8) "Market" means the interaction between buyers and sellers of workers' compensation insurance within this state pursuant to the provisions of this act.

(9) "Noncompetitive market" means a market for which there is a ruling in effect pursuant to Section 4 that a reasonable degree of competition does not exist.

(10) "Pure premium rate" means that portion of the rate which represents the loss cost per unit of exposure including loss adjustment expense.

(11) "Rate" means the cost of insurance per exposure base unit, prior to any application of individual risk variations based on loss or expense considerations, and does not include minimum premiums.

(12) "Residual market mechanism" means an arrangement, either voluntary or mandated by law, involving participation by insurers in the equitable apportionment among them of insurance which may be afforded applicants who are unable to obtain insurance through ordinary methods.

(13) "Statistical plan" means the plan, system or arrangement used in collecting data.

(14) "Supplementary rate information" means any manual or plan of rates, classification system, rating schedule, minimum premium, policy fee, rating rule, rating plan, and any other similar information needed to determine the applicable premium for an insured.

(15) "Supporting information" means the experience and judgment of the filer and the experience or data of other insurers or organizations relied on by the filer, the interpretation of any statistical data relied on by the filer, descriptions of methods used in making the rates, and any other similar information required to be filed by the commissioner.

SECTION 3. This act applies to workers' compensation insurance and employers' liability insurance written in connection therewith.

SECTION 4. A competitive market is presumed to exist unless the commissioner, after hearing, determines that a reasonable degree of competition does not exist in the market and the commissioner issues an order to that effect. Such an order shall expire no later than one (1) year after issue. In determining whether a reasonable degree of competition exists, the commissioner may consider relevant tests of workable competition pertaining to market structure, market performance and market conduct.

SECTION 5.

(a) Rates shall not be excessive, inadequate or unfairly discriminatory.

(b)(1) Rates in a competitive market are not excessive.

(2) Rates in a noncompetitive market are excessive if such rates are likely to produce a long run profit that is unreasonably high for the insurance provided or if expenses are unreasonably high in relation to services rendered.

(c) Rates are not inadequate unless clearly insufficient to sustain projected losses and expenses and the use of such rates, if continued, will tend to create a monopoly in the market.

(d) Unfair discrimination exists if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses. A rate is not unfairly discriminatory because different premiums result for policyholders with like loss exposures but different expenses, or like expenses but different loss exposures, so long as the rate reflects the differences with reasonable accuracy.

SECTION 6.

(a) Nothing herein prohibits or regulates the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, but in the payment of such dividends there shall be no unfair discrimination between policyholders.

(b) A plan for the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers is not considered a rating plan or system.

(c) It is an unfair trade practice to make the payment of a dividend or any portion thereof conditioned upon renewal of the policy or contract.

SECTION 7. In determining whether rates comply with the excessiveness standard in a noncompetitive market, the inadequacy standard and the unfair discrimination standard, the following criteria shall apply:

(a) Due consideration may be given to past and prospective loss and expense experience within and outside of this state, to catastrophe hazards and contingencies, to events or trends within and outside of this state, to loadings for leveling premium rates over time, for dividends or savings to be allowed or returned by insurers to their policyholders, members or subscribers, and to all other relevant factors, including judgment.

(b) The expense provisions included in the rates to be used by an insurer shall reflect the operating methods of the insurer and, so far as it is credible, its own actual and anticipated expense experience.

(c) The rates may contain provision for contingencies and an allowance permitting a reasonable profit. In determining the reasonableness of profit, consideration should be given to all investment income attributable to premiums and the reserves associated with those premiums.

SECTION 8.

(a) Every workers' compensation insurer shall adhere to a uniform classification system and uniform experience rating plan filed with the commissioner by an advisory organization designated by the commissioner and subject to his disapproval. An insurer may develop subclassifications of the uniform classification system upon which a rate may be made; provided, however, that such subclassifications must be filed with the commissioner thirty (30) days prior to their use. The commissioner shall disapprove subclassifications if the insurer fails to demonstrate that the data thereby produced can be reported consistent with the uniform statistical plan and classification system.

(b) The commissioner shall designate an advisory organization to assist him in gathering, compiling and reporting relevant statistical information. Every workers' compensation insurer shall record and report its workers' compensation experience to the designated advisory organization as set forth in the uniform statistical plan approved by the commissioner.

(c) The designated advisory organization shall develop and file manual rules, subject to the approval of the commissioner, reasonably related to the recording and reporting of data pursuant to the uniform statistical plan, uniform experience rating plan, and the uniform classification system. Every workers' compensation insurer shall adhere to the approved manual rules and experience rating plan in writing and reporting its business. No insurer shall agree with any other insurer or with an advisory organization to adhere to manual rules which are not reasonably related to the recording and reporting of data pursuant to the uniform classification system or the uniform statistical plan.

SECTION 9.

(a) In a competitive market, every insurer shall file with the commissioner all rates and supplementary rate information which are to be used in this state, except as provided in Section 8. Such rates and supplementary rate information shall be filed not later than thirty (30) days after the effective date. An insurer may adopt by reference, with or without deviation, the rates and supplementary rate information filed by another insurer. If the commissioner finds, after a

hearing, that an insurer's rates require closer supervision because of the insurer's financial condition or unfairly discriminatory rating practices, the insurer shall file with the commissioner at least thirty (30) days before the effective date, all such rates and such supplementary rate information and supporting information as prescribed by the commissioner. Upon application by the filer, the commissioner may authorize an earlier effective date.

(b) In a noncompetitive market every insurer shall file with the commissioner all rates and supplementary rate information which are to be used in this state, except as provided in Section 8. Such rates and supplementary rate information and supporting information required by the commissioner shall be filed at least thirty (30) days before the effective date. Upon application by the filer, the commissioner may authorize an earlier effective date.

(c) Rates filed pursuant to this section shall be filed in such form and manner as prescribed by the commissioner. In a noncompetitive market, whenever a filing is not accompanied by such information as the commissioner has required under this section, the commissioner shall so inform the insurer as soon as possible and the filings shall not be deemed to be made until the information is furnished.

(d) All rates, supplementary rate information and any supporting information for risks filed under this act shall, as soon as filed, be open to public inspection at any reasonable time. Copies may be obtained by any person on request and upon payment of a reasonable charge.

SECTION 10. The experience rating plan shall contain reasonable eligibility standards, provide adequate incentives for loss prevention, and provide for sufficient premium differentials so as to encourage safety.

SECTION 11.

(a)(1) A rate may be disapproved at any time subsequent to the effective date.

(2) A rate subject to prefilings under Section 9 may also be disapproved before the effective date.

(3) A rate for a residual market in which insurers are mandated by law to participate shall not become effective until approved by the commissioner, as provided in Section 18.

(b)(1) The commissioner may disapprove a rate if the insurer fails to comply with the filing requirements under Section 9.

(2) The commissioner shall disapprove a rate for use in a competitive market if the commissioner finds that the rate is inadequate or unfairly discriminatory under Section 5.

(3) The commissioner shall disapprove a rate for use in a noncompetitive market if the commissioner finds that the rate is excessive, inadequate or unfairly discriminatory under Section 5.

(c)(1)(A) If the commissioner finds that a reasonable degree of competition does not exist in a market in accordance with Section 4, the commissioner may require that the insurers in that market file supporting information in support of existing rates. If the commissioner believes that such rates may violate any of the requirements of this act, the commissioner shall call a hearing prior to any disapproval.

(B) If the commissioner believes that rates in a competitive market violate the inadequacy or unfair discrimination standard in Section 5 or any other applicable requirement of this act, the commissioner may require that the insurers in that market file supporting information in support of existing rates. If, after reviewing the supporting rate information, the commissioner continues to believe that the rates may violate these requirements the commissioner shall call a hearing prior to any disapproval.

(C) The commissioner may disapprove, without hearing, rates prefiled pursuant to Section 9 that have not become effective. However, the insurer whose rates have been disapproved shall be given a hearing upon a written request made within thirty (30) days after the disapproval order.

(D) Every insurer or advisory organization shall provide within this state reasonable means whereby any person aggrieved by the application of its filings may be

heard on written request to review the manner in which such rating system has been applied in connection with the insurance afforded or offered. If the insurer or advisory organization fails to grant or reject such request within thirty (30) days, applicant may proceed in the same manner as if the application had been rejected. Any party affected by the action of such insurer or advisory organization on such request, may within thirty (30) days after written notice of such action, appeal to the commissioner who, after a hearing held upon not less than ten (10) days' written notice to the appellant and to such insurer or advisory organization, may affirm, modify or reverse such action.

(2) If the commissioner disapproves a rate, the commissioner shall issue an order specifying in what respects it fails to meet the requirements of this act and stating when, within a reasonable period thereafter, such rate shall be discontinued for any policy issued or renewed after a date specified in the order. The order shall be issued within thirty (30) days after the close of the hearing or within such reasonable time extension as the commissioner may fix. Such order may include a provision for premium adjustment for the period after the effective date of the order for policies in effect on such date.

(3) Whenever an insurer has no legally effective rates as a result of the commissioner's disapproval of rates or other act, the commissioner shall, on request of the insurer, specify interim rates for the insurer that are high enough to protect the interests of all parties and may order that a specified portion of the premiums be placed in an escrow account approved by him. When new rates become legally effective, the commissioner shall order the escrowed funds or any overcharge in the interim rates to be distributed appropriately except that refunds of less than ten dollars (\$10) per policyholder shall not be required.

SECTION 12. In determining whether or not a competitive market exists pursuant to Section 4, the commissioner shall monitor the degree of competition in this state. In doing so, the commissioner shall utilize existing relevant information, analytical systems and other sources; cause or participate in the development of new relevant information, analytical systems and other sources; or rely on some

combination thereof. Such activities may be conducted internally within the department of commerce and insurance, in cooperation with other state insurance departments, through outside contractors and/or in any other appropriate manner.

SECTION 13.

(a) No advisory organization shall provide any service relating to the rates of any insurance subject to this act, and no insurer shall utilize the services of such organization for such purposes unless the organization has obtained a license under subsection (c).

(b) No advisory organization shall refuse to supply any services for which it is licensed in this state to any insurer authorized to do business in this state and offering to pay the fair and usual compensation for the services.

(c)(1) An advisory organization applying for a license shall include with its application:

(A) A copy of its constitution; charter; articles of organization, agreement, association or incorporation; and a copy of its bylaws, plan of operation, and any other rules or regulations governing the conduct of its business;

(B) A list of its members and subscribers;

(C) The name and address of one (1) or more residents of this state upon whom notices, process affecting it, or orders of the commissioner may be served;

(D) A statement showing its technical qualifications for acting in the capacity for which it seeks a license; and

(E) Any other relevant information and documents that the commissioner may require.

(2) Every advisory organization which has applied for a license shall notify the commissioner of every material change in the facts or in the documents on which its application was based. Any amendment to a document filed under this section shall be filed at least thirty (30) days before it becomes effective.

(3) If the commissioner finds that the applicant and the natural persons through whom it acts are competent, trustworthy and technically qualified to provide the services proposed, and that all requirements of law are met, the commissioner shall issue a license specifying the authorized activity of the applicant. The commissioner shall not issue a license if the proposed activity would tend to create a monopoly or to substantially lessen competition in the market.

(4) Licenses issued pursuant to this section shall remain in effect until the licensee withdraws from the state or until the license is suspended or revoked. The commissioner may at any time, after hearing, revoke or suspend the license of an advisory organization which does not comply with the requirements and standards of this act.

SECTION 14.

(a) No insurer or advisory organization shall make any arrangement with any other insurer, advisory organization or other person which has the purpose or effect of restraining trade unreasonably or of substantially lessening competition in the business of insurance.

(b) No insurer shall agree with any other insurer or with an advisory organization to adhere to or use any rate, rating plan, other than the uniform experience rating plan, or rating rule except as needed to comply with the requirements of Section 8.

(c) The fact that two (2) or more insurers, whether or not members or subscribers of an advisory organization, use consistently or intermittently, the same rates, rating plans, rating schedules, rating rules, policy forms, rate classifications, underwriting rules, surveys or inspections or similar materials is not sufficient in itself to support a finding that an agreement exists.

(d) Two (2) or more insurers having a common ownership or operating in this state under common management or control may act in concert between or among themselves with respect to any matters pertaining to those activities authorized in this act as if they constituted a single insurer.

SECTION 15. In addition to other prohibitions contained in this act, except as specifically permitted under Section 16, no advisory organization shall:

- (a) Compile or distribute recommendations relating to rates that include expenses (other than loss adjustment expenses) or profit; or
- (b) File rates, supplementary rate information or supporting information on behalf of an insurer.

SECTION 16. Any advisory organization, in addition to other activities not prohibited, is authorized to:

- (a) develop statistical plans, including class definitions;
- (b) collect statistical data from members, subscribers or any other source;
- (c) prepare and distribute pure premium rate data, adjusted for loss development and loss trending, in accordance with its statistical plans. Such data and adjustments should be in sufficient detail so as to permit insurers to modify such pure premiums based on their own rating methods or interpretations of underlying data;
- (d) prepare and distribute manuals of rating rules and rating schedules that do not contain any rules or schedules including final rates or permitting calculation of final rates without information outside the manuals;
- (e) distribute information that is filed with the commissioner and open to public inspection;
- (f) conduct research and collect statistics in order to discover, identify and classify information relating to causes or prevention of losses;
- (g) prepare and file policy forms and endorsements and consult with members, subscribers and others relative to their use and application;
- (h) collect, compile and distribute past and current prices of individual insurers if such information is made available to the general public;

(i) conduct research and collect information to determine the impact of benefit level changes on pure premium rates;

(j) prepare and distribute rules and rating values for the uniform experience rating plan; calculate and disseminate individual risk premium modification; and

(k) assist an individual insurer to develop rates, supplementary rate information or supporting information when so authorized by the individual insurer.

SECTION 17. Every advisory organization shall file with the commissioner every pure premium rate, every manual of rating rules, every rating schedule and every change or amendment or modification of any of the foregoing proposed for use in this state no more than thirty (30) days after it is distributed to members, subscribers or others.

SECTION 18. All insurers authorized to write workers' compensation and employers' liability insurance shall participate in a plan providing for the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods. A plan shall be submitted for the commissioner's approval within sixty (60) days of the effective date of this act. The rates, supplementary rate information and policy forms to be used in such a plan and any future modification thereof must be submitted to the commissioner for approval at least thirty (30) days prior to their effective date. Such rates shall reflect residual market experience to the extent it is actuarially appropriate.

The commissioner shall disapprove any filing that does not meet the requirements of Section 5. A filing shall be deemed to meet such requirements unless disapproved by the commissioner within thirty (30) days after the filing is made. In disapproving a filing made pursuant to this section, the commissioner shall have the same authority and follow the same procedure as in disapproving a filing pursuant to Section 11. The designated advisory organization may make and file the plan of operation, rates, rating plans, rules and policy forms under this section.

SECTION 19.

(a) The commissioner may examine any insurer, advisory organization or residual market mechanism as he deems necessary to ascertain compliance with this act.

(b) Every insurer, advisory organization and residual market mechanism shall maintain reasonable records of the type and kind reasonably adapted to its method of operation containing its experiences or the experience of its members including the data, statistics or information collected or used by it in its activities. These records shall be available at all reasonable times to enable the commissioner to determine whether the activities of any advisory organization, insurer or association comply with the provisions of this Article. Such records shall be maintained in an office within this state or shall be made available to the commissioner for examination or inspection at any time upon reasonable notice.

(c) The reasonable cost of an examination made pursuant to this section shall be paid by the examined party upon presentation of a detailed account of such costs.

(d) In lieu of any such examination the commissioner may accept the report of an examination by the insurance supervisory official of another state, made pursuant to the laws of such state.

SECTION 20.

(a) The commissioner may, if the commissioner finds that any person or organization has violated any provision of this act, impose a penalty of not more than one thousand dollars (\$1,000) for each such violation, but, if the commissioner finds such violation to be willful, the commissioner may impose a penalty of not more than ten thousand dollars (\$10,000) for each such violation. Such penalties may be in addition to any other penalty provided by law.

(b) For purposes of this section, any insurer using a rate for which the insurer has failed to file the rate, supplementary rate information or supporting information, as required by this act, shall have committed a separate violation for each day such failure continues.

(c) The commissioner may suspend or revoke the license of any advisory organization or insurer which fails to comply with an order of the commissioner within the time limit specified by such order, or any extension thereof which the commissioner may grant.

The commissioner may determine when a suspension of license shall become effective and it shall remain in effect for the period fixed by him, unless the commissioner modifies or rescinds such suspension, or until the order upon which such suspension is based is modified, rescinded or reversed.

No penalty shall be imposed and no license shall be suspended or revoked except on a written order of the commissioner, stating his findings, made after hearing.

SECTION 21.

(a) Any order, regulation or decision of the commissioner, made after a hearing, shall be subject to judicial review in accordance with Tennessee Code Annotated, Title 4, Chapter 5.

(b) Upon request of any insurer or organization to which the commissioner has directed an order made without a hearing, the commissioner shall grant a hearing within twenty (20) days of such request. Within fifteen (15) days after such hearing the commissioner shall affirm, reverse or modify the previous action, specifying the reasons therefor.

SECTION 22. The provisions of this act concerning workers' compensation insurance shall take precedence in cases where there is a conflict with other provisions of Tennessee Code Annotated, Title 56 and Title 50, Chapter 6, Part 4. Otherwise, the provisions of this act are supplementary to such other provisions of law.

SECTION 23. Tennessee Code Annotated, Section 50-6-402(b) and (c), are deleted in their entirety.

SECTION 24. Tennessee Code Annotated, Section 56-5-306(b), is amended by deleting the subsection in its entirety.

SECTION 25. Tennessee Code Annotated, Section 56-5-313(b), is amended by deleting the subsection in its entirety.

SECTION 26. If any provision of this act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the act, and the application of such provision to person or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SECTION 27. This act shall take effect July 1, 1997, the public welfare requiring it.